



**IN THE
UNITED STATES
PATENT AND TRADEMARK OFFICE**

IN RE APPLICATION OF: Raymond Liberatore

CASE: LIB-051003CP01

SERIAL NO.: 10/750,447

FILING DATE: December 30, 2003

MARK: SPREADER

**RESPONSE TO
RESTRICTION
REQUIREMENT
DATED
10/15/2004**

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

ATTENTION OF:
Art Unit 3751
EXAMINER:
Prunner, Kathleen J.

Dear Sir:

If any charges or fees must be paid in connection with the following communication, they may be paid out of our Deposit Account No. 50-0545.

This is in response to the restriction requirement mailed October 15, 2004. Applicant acknowledges and thanks the Examiner for renumbering the claims because of the error in the original numbering. Applicant also traverses the restriction requirement in the Office Action for the foregoing reasons.

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In the restriction requirement, the present application was divided into five allegedly distinct, and thus unrelated, inventions. In particular, the allegedly distinct inventions were listed as:

- I. Claim 1-31, drawn to a squeezable container with a spreader, classified in class 401, subclass 5.
- II. Claims 32-36, drawn to a container with a detachable handle and a plunger, classified in class 401, subclass 176.
- III. Claims 37-39, drawn to a container having a bag disposed therein, classified in class 401, subclass 152.
- IV. Claims 40-43, drawn to a container having a bag disposed therein and utilizing a plunger, classified in class 401, subclass 163.
- V. Claim 44, drawn to a container having a screw activating mechanism, classified in class 401, subclass 172.

The Office Action conclusively states that these inventions are unrelated because “they are not disclosed as capable of use together and they have different mode of operation, different function or different effects.” However, the Office Action fails to provide any support for these conclusions.

As stated in MPEP §806.4, an example of unrelated inventions is “[a]n article of apparel such as a shoe, and a locomotive bearing....” Another example stated in the MPEP is “a process of painting a house and a process of boring a well....”

In the current application, all pending claims are drawn to an apparatus having a nozzle wherein a spreadable food is dispensed therefrom. Accordingly, the inventions are not unrelated and the Applicant respectfully requests that the restriction requirement be withdrawn.

Should the restriction requirement not be withdrawn, then Applicant elects Group I (i.e., claims 1-31). Based on this provisional election, with traverse, the Office Action also requests that the Applicant elect a species of the invention based on the embodiments shown in the figures of the application. In particular, the Applicant is forced to elect a species of spreader and nozzle.

Applicant believes requiring such an election is improper because, as admitted in the Office Action, all of the claims in Group I are in class 401, subclass 5. Thus, a search regarding all of the claims in Group I would not pose an undue burden.

Nevertheless, Applicant provisionally elects, with traverse, the spreader and nozzle as generally shown in Figures 4 and 21B because 37 C.F.R. 1.143 requires that such an election be made even though it is with traverse. Accordingly, Applicant provisionally elects claims 1-3, 5, 7-8, 10, 16, 26-27, and 29-31.

Should the Examiner have any questions or concerns, the Examiner is requested to contact the undersigned at (312) 226-1818.

Dated: January 18, 2005

Respectfully Submitted,

FACTOR & LAKE, LTD.



Edward L. Bishop, Esq.
Attorney for Applicant

